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Human Rights Council
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Agenda item 4
Human rights situations that require the Council's attention

Joint written statement* submitted by France Libertes: Fondation Danielle Mitterrand, the Society for Threatened Peoples, non-governmental organizations in special consultative status; the Indian Council of South America (CISA), International Educational Development, Inc., Survival International Ltd., non-governmental organizations on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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1411288

Please recycle

Large dams and violations of indigenous peoples' rights in the Brazilian Amazon*

The systematic violations of indigenous and tribal peoples' rights in the planning, licensing and construction of large hydroelectric dams in the Amazon region, previously denounced by NGOs during sessions of the Human Rights Council (March and September 2012[1]) – as well as in numerous petitions submitted by Brazilian and international civil society organizations to UN rapporteurs, the Office of the United Nations High Commissioner of Human Rights (OHCHR)[2], the Inter-American Commission on Human Rights[3] and the International Labor Organization (ILO)[4] – have not only continued unabated, but intensified, together with their devastating human and environmental consequences. This statement provides a brief update on violations of indigenous and tribal peoples' rights – particularly the right to Free, Prior and Informed Consultation and Consent (FPIC) – in the cases of the Belo Monte Hydroelectric Complex on the Xingu River, and in the neighboring basin on the Tapajós river, the focus of the Brazilian government's current plans for expansion of large dam construction in the Amazon.[5]

Belo Monte

The Belo Monte Hydroelectric Complex, under construction since mid-2011 in the heart of the Brazilian Amazon, is arguably the world's most notorious example of a mega-dam project that involves blatant disregard for both national legislation and international agreements concerning human rights and environmental protection. In this regard, Belo Monte has been the object of no less than twenty Civil Action Lawsuits filed by the Federal Public Prosecutors' Office (Ministério Público Federal) since 2001.

One of the key lawsuits against Belo Monte concerns the approval of a legislative decree (Decreto Legislativo n°788/2005) by Brazil's National Congress that authorized project construction, despite a lack of prior consultations with affected indigenous and tribal peoples, as determined by article 231 of the Federal Constitution and ILO Convention 169. The Federal Public Prosecutors' Office (MPF) filed a lawsuit in 2006, demanding suspension of Decree 788 and compliance with the constitutional mandate concerning prior consultations with indigenous peoples whose territories and livelihoods are threatened by construction of Belo Monte. Finally, on August 13, 2012, a federal appeals court (TRF-1) ruled on the merits of the case, suspending Decree 788 and the construction of Belo Monte. In a matter of days, outgoing Chief Justice of the Supreme Court (STF), Carlos Ayres Britto, upon request from the Attorney General's Office (AGU), unilaterally suspended the court decision, ignoring arguments concerning the case's merit and postponing a final judgment by the Supreme Court.

Tapajós

The Tapajós basin, located to the west of the Xingu, is currently the main focus of the Brazilian government's ambitious dam construction plans for the Amazon. Projects include three large dams on the main stem of the Tapajós river; along its main tributaries, four dams are slated for construction on the Jamanxim River, five dams in the Teles Pires River (two of which are already under construction) and 17 large dams are proposed for the Juruena River (in addition to over 80 small and medium hydroprojects – PCHs).

Dam construction in the Tapajós basin is on a collision course with indigenous peoples and their territories, as well as other protected areas. Political decisions concerning which dams will be built are based on basin inventories carried out by the Ministry of Mines and Energy and private construction companies that systematically underestimate (or simply ignore) social and environmental consequences of individual projects, as well as cumulative impacts of dam cascades

[1] A/HRC/19/NGO/72 and A/HRC/21/NGO/75
[2] http://www.aida-americas.org/sites/default/files/refDocuments/LargeDams_UPRJointSub_Brazil_2nd_Cycle.pdf
[3] http://www.aida-americas.org/sites/default/files/refDocuments/Medida%20Cautelar%20UHE%20Belo%20Monte%20Brasil.pdf
[4] http://util.socioambiental.org/inst/esp/consulta_previa/sites/util.socioambiental.org.inst.esp.consulta_previa/files/0808-ComunicaçãoInd%C3%ADgena169OITEspañol.pdf
[5] See also: http://www.internationalrivers.org/resources/hydroelectric-dams-in-pará-and-two-serious-legal-offenses-omission-and-leniency-8179

and related mega-projects in the mining, transportation and agribusiness sectors. Political decisions are made in absence of processes of FPIC among indigenous peoples and other threatened traditional populations – despite requirements of the Brazilian Constitution and international agreements, such as ILO Convention 169.

As demonstrated by the cases of the Teles Pires and São Manoel dams, that directly impact the Kayabi, Apiaká and Munduruku indigenous peoples living along Teles Pires river, the planning and licensing of dams in the Tapajós basin has also been characterized by strong-arming of federal institutions responsible for environmental protection (IBAMA) and indigenous peoples' rights (FUNAI), with political decisions countering the opinions of technical staff.

When the Federal Public Prosecutors Office has filed civil action lawsuits regarding lack of FPIC with indigenous peoples in the planning and licensing of the Tapajós dams, as well as other illegalities (e.g. lack of analysis of cumulative impacts of dam cascades, as determined by Brazilian environmental law, incomplete indigenous components of environmental impact assessments), the response of the Brazilian government has been to pressure Chief Justices of federal courts to suspend favorable decisions, using a legal artifice known as "Suspensão de Segurança" (also used by STF Chief Justice Ayres Britto in the Belo Monte case described above).

In Brazil, the Suspensão de Segurança ("Security Suspension") is a legal artifice dating back to the military dictatorship that allows Chief Justices, upon request from the Attorney General's Office (AGU) to suspend court decisions based on supposed threats to national security and the country's "social and economic order".[6] Such suspensions have increasingly been applied to decisions favorable to lawsuits filed by MPF against violations of human rights and environmental legislation in the planning and licensing of hydroelectric dams. Generic arguments used by AGU and Chief Justices to justify the use of the "suspensão de segurança" is that if all projected dams are not constructed, Brazil will face imminent blackouts and economic disaster. Such decisions lack technical arguments, while ignoring a growing body of literature concerning the enormous opportunities for Brazil in terms of energy efficiency and truly sustainable renewables that could drastically reduce the need for new hydroelectric dams.[7] According to current legislation, "security suspensions" remain in effect until the last possible phase of appeals (transito em julgado), allowing the continuation of dam construction and situations of a fait accompli, while gross violations of human rights and their tragic consequences are ignored.

When indigenous peoples of the Xingu and Tapajós have protested in defense of their rights, the response of the Brazilian government has not been to dialogue, but rather engage in acts of intimidation, criminalization and repression, while attempting to coopt leaders of resistance movements. In the case of Belo Monte, the National Guard is now engaged as a private security force for the Norte Energia (NESA) dam consortium, while attempting to criminalize leaders of the Xingu Vivo movement and indigenous peoples. In 2013, the administration of President Dilma Rousseff launched an elaborate military operation known as "Operação Tapajós", dispatching heavily-armed National Guard and Federal Police troops to 'escort' teams conducting technical studies within traditional territories of the Munduruku indigenous people, in preparation for mega-dams about which they were never consulted, that would profoundly affect their territories and livelihoods. At the same time, the federal government has repeatedly questioned the legitimacy of Munduruku movement leaders involved in resistance to the planned Tapajós dams.

A tactic often employed by dam proponents in the government and private sector is to deny the existence of downstream impacts on indigenous peoples and their territories, largely as a means to justify the absence of processes of FPIC. An increasingly common practice, especially within the Ministry of Mines and Energy, is to attempt to confuse and conflate processes of FPIC and "public hearings" required by environmental legislation. With the possible exception of FUNAI, there has been a refusal within the federal government to acknowledge situations in which the consent of indigenous peoples should be prerequisite for project approval (e.g. mega-infrastructure and mining enterprises with enormous potential impacts on indigenous livelihoods and rights). Finally, a growing trend among government agencies is to promote 'consultations' among indigenous peoples on large dams and other mega-projects that have already been politically approved.

[6] See also : http://www.icjp.pt/sites/default/files/papers/o_terror_juridico_completo.pdf

[7] See, for example: The Brazilian Electrical Sector and Sustainability in the 21st century: Opportunities and Challenges (2012) http://www.internationalrivers.org/node/7525

Recommendations

Our organizations respectfully appeal to the Special Rapporteur on Human Rights of Indigenous Peoples, the Special Rapporteur on the Promotion of Truth, Justice, Reparation, and Guarantees of Non-recurrence, the Special Rapporteur in the field of Cultural Rights, the Special Rapporteur on the Independence of Judges and Lawyers and the Independent Expert on Minority Issues

- to investigate how the utilization of the "Security Suspension" (Suspensão de Segurança) by the Brazilian government and chief justices in lawsuits concerning large dams and other proposed mega-projects constitutes an impediment to compliance with international agreements concerning human rights, including the right to FPIC among indigenous peoples and other traditional populations, as determined by ILO Convention 169, the Inter-American Human Rights System and UNDRIP. With support from independent Brazilian and international experts, investigations should include field visits to interview affected communities, leaders of social movements, NGOs, federal public prosecutors (MPF) and other legal experts, including federal judges whose decisions have been systematically overturned, among others.

- to organize a special event to discuss this urgent issue, including conclusions and recommendations of investigations by special rapporteurs and experts, with participation of key parties (e.g. indigenous and tribal leaders, social movements, NGOs, MPF, AGU/PR, federal judges and independent legal experts).

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Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Please recycle

Bangladesh: Enforced disappearances are increasing alarmingly

1. The Asian Legal Resource Centre (ALRC) is gravely concerned by the ongoing pattern of deprivation of the right to life through enforced disappearance and killing in the pretext of "crossfire" in Bangladesh. Simultaneously, there are also incidents of "secret killings" of disappeared persons. The number of enforced disappearance has been increasing alarmingly in the recent months in the country. The majority of the victims are identified as activists of the pro-opposition political parties. The incumbent government is allegedly continuing a "cleansing mission" against its political oppositions through the Joint Forces, comprising the Police, Rapid Action Battalion (RAB), and Border Guards Bangladesh (BGB) who are disappearing and killing people in "gunshots".

2. The latest spree of enforced disappearance has been speeding up since the ruling party has renewed its tenure through a fake election that was boycotted by all the opposition parties. The government denied the people's right to elect their representatives in the 10th parliamentary "election". At least 52% of electorate found their votes meaningless as 153 (out of a total of 300) parliamentary seats were decided before the election in order to secure the ruling parties' "unopposed victory". The remaining 147 seats' elections experienced extremely low turnout amidst riggings by the ruling party cadres and violence between state agents and opposition supporters. Before and the after the "election", staged on 5 January 2014, the opposition has been demanding a fresh election ensuring the people's participation in a transparent, free and fair atmosphere under a non-party government so that administrative bias can be avoided. The current incidents of enforced disappearance have been occurring in such a backdrop with the purpose of silencing the voices of the people by creating extreme form of fear and panic in the society.

3. Bangladesh remained a long-standing member of the Human Rights Council since the inception of the UN rights watchdog. It appears that Bangladesh's recent presence in the Council has been useless as the situation of human rights has been worsening ever in the history. Orally, and in writing the Council has been receiving numerous rhetorical pledges from the Bangladeshi delegations who ultimately expose their hypercritic positions, in opposition to their own people, before the international community. The constitutional guarantees to protect the rights (to life, of personal safety, and of liberty) of the citizens are mere parchments without any practical value in the real lives of the people. Disappearances continue despite the fact that the country has obligation as per the Constitution of the country and international human rights instruments.

4. As a party to the International Covenant on Civil and Political Rights (ICCPR) since 6 September 2000, Bangladesh has obligations to implement Articles 2 and 6 for protecting the right to life of its citizens. According to Article 2 and 6 of the ICCPR, Bangladesh has the obligation to ensure the right to life of its people, and ensure prompt and effective reparation where violations occur. It is also obliged to bring legislation into conformity with the ICCPR.

5. Article 32 of the Constitution of Bangladesh protects the fundamental right to life and liberty, stating that: "[n]o person shall be deprived of life or personal liberty, save in accordance with law." Moreover Article 31 of the Constitution reads: "[t]o enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law."

6. In reality, these provisions have not been implemented and this most fundamental right is being repeatedly violated with complete impunity. Enforced disappearances, that took thousands of human lives in the early 1970s and continued during the tenures of the successive governments with fewer numbers of cases, have been resumed in Bangladesh after the RAB started operating in the country without consequence.

7. The Asian Human Rights Commission (AHRC), ALRC's sister organisation, has documented cases of disappearances that have been alarmingly increasing. At least 35 persons were disappeared in 2013. Between the parliamentary election schedule was announcement on 25 November 2013 and 2 January 2014, a period of 37 days, at least 10 persons have been disappeared. The recent patterns show that the Police, RAB, and BGB jointly and are individually picking up persons from places of work, business, off the streets, and at home. For days, sometimes weeks, the persons remain missing. In certain cases, dead bodies are found floating in paddy fields, roadside ditches, or in

rivers while many remain missing, their whereabouts still unknown to their relatives. In the cases when the dead bodies are recovered, the law-enforcement agencies threaten the relatives with further loss of lives if any information is shared with any human rights or media groups. The police and paramilitary forces cordon-off the area and compel the families to bury the dead bodies immediately. The police refuse to register any complaint regarding the cases of disappeared persons when specific allegations are made against any agency of the state. Those cases registered without naming the law-enforcement officials have not been investigated credibly, let alone led to any prosecution or justice for the families. The high ranking government officials, including the ministers and even the Prime Minister, deny all the allegations of disappearance, defending the law-enforcing agents. The Government also constantly denies the demands for credible investigation of the allegations of enforced disappearance. Whenever local and international human rights groups have demands that a high profile judicial probe commission headed by a Supreme Court judge be formed, the government routinely ignores the demands and simultaneously blames "professional criminals" for the crimes. Now, disappearance continues while the notion of justice to the families of the disappeared is also vanishing in Bangladesh. Practically, the families of the disappeared victims have few things actually guaranteed by the state: generic denial of the allegations of disappearance, constant threats and intimidations, refusal to register complaints of disappearance, and absence of justice.

8. The legal provision of seeking judicial remedy through habeas corpus writs is a meaningless exercise in Bangladesh. The country's judiciary is a façade, it facilitates the executive authority's systematic practice of denying fundamental right. Whenever a writ petition is filed with the High Court Division regarding the allegation of disappearance, the country's Attorney General's Office acts like a postman on behalf of the law-enforcement agencies and paramilitary forces in Court. The normal process appear surprisingly simple: the Court will consider the writ, in whole or in part, sometimes all at once or on several occasion and the state attorneys will submit a denial of the allegations based on claims from the defendant agencies. Rather than look at the facts, the court will generally accept the government's excuses outright, though in the best cases they issue a "Rule" against the respondent which requires a timely response. This "Rule" is often delayed in its delivery so as to provide ample time to the perpetrators to intimidate and harass the petitioners or their supporters and should the respondents receive and reply to the "Rule" they merely restate their denials, though most do not respond at all, relying instead upon the functional immunity the courts provide such agencies. Thus, habeas corpus writs, and the justice they are designed to provide the affected families, is denied and ignored. It is important to note that very few people can afford the high expenditure of seeking remedies in the High Court Division due to excessive fees for lawyers and entrenched bribery at every step within the judicial institution, from filing a petition to collecting the Court's order. The justice-seekers become utterly frustrated and annoyed by the judicial process, which only offers harassment at very high costs in terms of money, energy, time, and further threats as a consequence of seeking justice for a crime committed by the state agents. In last five years, since the allegations of enforced disappearance started mounting higher and higher, there has been not a single instance known by the human rights groups where a family has received any form of judicial remedy in any alleged case of disappearance.

9. The ALRC urges the Human Rights Council and the international community to re-think how to develop and adapt effective and binding mechanisms to ensure the fundamental guarantees of those who are living in the states like Bangladesh where the judiciary has been reduced to the level of a tool that is available for arbitrary use by the country's authoritarian government. The international human rights instruments in the form of Covenants, Conventions, Protocols, and General Comments have already contributed a lot in developing the theories, norms, standards, and principals that have been universally recognised. Regrettably, countries like Bangladesh, where the basic rule of law institutions, including the judiciary, maintain evident disability in functioning independently and competently throughout history, can easily walk away despite orchestrating heinous forms crimes against its own people. The country's political culture influences both the entire criminal justice system (regardless of what is written in its Constitution, domestic laws, or the international human rights instruments that it has acceded to) and societal behaviour in general. The state itself violates fundamental human rights and provokes many non-state actors to take laws into their own hands. At the end of the day, the citizens are living in a panic-stricken condition, helpless, as they have no remaining resort to rely on. If the Human Rights Council and the international community remain convinced today with only their theoretic achievements, without considering the dire necessity of putting the theories into the practical life of a vast population of the world (in this case those living in Bangladesh) it will be recorded as a landmark failure in tomorrow's history.